

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
WAYNE ENGLAND)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	CASE NUMBER WPC07-0228

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Wayne England (hereinafter "the Respondent") is a resident of the state of Tennessee and is the owner of property located at 3384 Tom Littlejohn Road, in Maury County (hereinafter the "site"). Service of process may be made on the Respondent at 3384 Tom Littlejohn Road, Columbia, Tennessee 38401.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Duck River, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife, industrial water supply and domestic water supply. Additionally, this segment of the Duck River has been designated as a State Scenic River.

FACTS

VIII.

On February 23, 2007, division personnel in the Columbia Environmental Field Office (CLEFO) received a complaint from the Tennessee Wildlife Resources Agency (TWRA) concerning the construction of a boat launch ramp on the left descending bank of the Duck River. The complaint indicated that Mr. Chris England, son of the Respondent, was constructing a boat launch ramp on property owned by the Respondent. A file review determined that written ARAP authorization for this activity had not been requested or issued. Division personnel contacted Mr. England, who stated that he was constructing an access point to the Duck River at the site. Division personnel instructed Mr. England to immediately stabilize the site and apply for an ARAP.

IX.

On March 2, 2007, division personnel from the CLEFO investigated the site and noted a cleared area on the bank of the Duck River. No Erosion Prevention and Sediment Control (EPSC) measures were present and no stabilization measures had been implemented as requested on February 23, 2007. Division personnel were unable to judge the size of the cleared area to due high flow in the Duck River on that day.

X.

On March 21, 2007, division personnel returned to the site and noted that clearing and excavation work extended to the water's edge. The excavated area along the bank was approximately 45 feet in width with an access road-cut approximately 100 feet long leading to it from the adjacent field. Straw bales had been staked into the excavated area as a stabilization measure but erosion from this area into the Duck River indicated that the straw bales were inadequate.

XI.

On March 23, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the March 2, 2007, and March 21, 2007 site visits. In the NOV, the Respondent was reminded that this portion of the Duck River was designated as State Scenic River and would require an Individual ARAP.

XII.

On June 6, 2007, division personnel returned to the site and noted that construction activities were continuing. Straw bales had been staked into the excavated area at the waters

edge. No other EPSC measures were noted. Mr. England was instructed to stabilize the site and contact the division's Natural Resources Section (NRS) to determine the status of the ARAP for this site.

XIII.

On August 2, 2007, the NRS received an ARAP application package from the Respondent requesting written authorization for the construction of a boat launch ramp. This application was placed on Public Notice on August 16, 2007.

XIV.

On August 24, 2007, the division received a second complaint from TWRA personnel, along with photographs of the site, indicating that construction activities were continuing.

XV.

On October 6, 2007, after the 30-day Public Notice period had expired, the NRS sent correspondence informing the Respondent that processing of the ARAP application was terminated due to the fact that construction of the boat launch ramp had been substantially completed prior to the application submittal.

XVI.

During the course of investigation, the division incurred DAMAGES in the amount of THREE HUNDRED THIRTY SIX DOLLARS AND FIVE CENTS (\$336.05).

VIOLATIONS

XVII.

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans,

specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XVIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 30 days of receipt of this ORDER, submit to the division a corrective action plan (CAP) to restore the altered portion of the river bank to it's original condition. The CAP shall include a timetable for implementation of the proposed actions. The Respondent shall submit the CAP for review and approval to the Water Pollution Control Manager in the CLEFO at 2484 Park Plus Drive, Columbia, Tennessee 38401. The Respondent must correct any deficiencies the division finds upon review of the CAP and the corrected CAP should be resubmitted to the division within 30 days of notification of the deficiencies.
2. The Respondent shall, within 30 days of receipt of written approval of the CAP, initiate the approved actions. The written approval of the CAP by the division will constitute authorization for stream restoration and no additional ARAP coverage is required. The Respondent shall submit written notification to the division that work has begun at the time the Respondent initiates the CAP. The Respondent shall submit the written notification to the CLEFO at the address shown in item 1, above.

3. The Respondent shall, within 60 days of initiating the approved CAP, but not later than March 31, 2008, complete the CAP and submit written notification of completion to the division. The Respondent shall submit the written notification to the CLEFO at the address shown in item 1, above.
4. The Respondent shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
 - b. If the Respondent fails to comply with Part XVIII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XVIII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XVIII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
5. The Respondent shall DAMAGES to the division in the amount THREE HUNDRED THIRTY SIX DOLLARS AND FIVE CENTS (\$336.05).

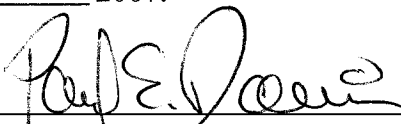
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this

31st day of October 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.